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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 13-184; FCC 19-117; FRS 16311]

Modernizing the E-Rate Program for Schools and Libraries

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) makes permanent the “category two budget” approach that the Commission adopted in 2014 to fund internal connections, which are primarily used for Wi-Fi, a technology that has enabled schools and libraries to transition from computer labs to one-to-one learning.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], except for §§ 54.502(d) and (e) and 54.513(d) which are delayed. The Commission will publish a document in the *Federal Register* announcing the effective date of those rules.

FOR FURTHER INFORMATION CONTACT: Stephanie Minnock, Wireline Competition Bureau, (202) 418-7400 or TTY: (202) 418-0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Report and Order (Order) in WC Docket No. 13-184; FCC 19-117, adopted on November 20, 2019 and released on December 3, 2019. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street SW, Washington, DC 20554 or at the following Internet address: <https://docs.fcc.gov/public/attachments/FCC-19-117A1.pdf>

I. INTRODUCTION

1. The Commission’s E-Rate program is a vital source of support for connectivity to—and within—schools and libraries. In particular, the E-Rate program provides funding for internal connections, which are primarily used for Wi-Fi, a technology that has enabled schools and libraries to transition from computer labs to one-to-one digital learning. In this document, the Commission makes permanent the “category two budget” approach that the Commission adopted in 2014 to fund these

internal connections. The category two budget approach consists of five-year budgets for schools and libraries that provide a set amount of funding to support internal connections. In adopting this approach, the Commission also established a five-year test period (from funding year 2015 to funding year 2019), to consider whether this approach would be effective in ensuring greater and more equitable access to E-Rate discounts.

2. Based on the overwhelming record support for the category two budget approach from the E-Rate community, coupled with the Commission's own experience during the five-year test period, the Commission concludes that the category two budget approach has provided broader, more equitable, and more predictable funding for schools and libraries than under the prior rules. The budget amount provided to schools and libraries during the test period proved to be successful, and, moving forward, the Commission intends to generally remain within those parameters of support. Building on the success of the category two budget approach, the Commission takes important steps to (1) streamline processes to ensure more equitable, consistent distribution of support for small, rural schools and libraries within the existing E-Rate program budget for category two services, (2) simplify the category two budgets, and (3) decrease the administrative burden of applying for category two services. As a result of the measures the Commission takes in this document, the category two budget approach will become more streamlined, furthering the program's overall effectiveness and the deployment of Wi-Fi in schools and libraries across the country.

II. DISCUSSION

3. To ensure that our nation's students and library patrons have access to high-speed broadband and to further the Commission's goal of bridging the digital divide for all Americans, it permanently extends the category two budget approach, which has provided certainty and more equitable funding to schools and libraries for the last five funding years. Doing so avoids a return to the two-in-five rules. Furthermore, informed by the Commission's experience with administering the category two budgets during the five-year test period, it simplifies and streamlines the category two budget approach to allow applicants to make more effective use of category two funding and to reduce administrative burdens. As part of these improvements, the Commission also provides more equitable, consistent

support for small, rural schools and libraries within the existing category two services budget and make permanent the eligibility of managed internal broadband services, caching, and basic maintenance of internal connections.

4. As detailed in the following, to ensure a smooth transition to the new rules, the Commission establishes rules for funding year 2020 that extend the five-year test period for an additional year and provide a prorated amount of category two support to all applicants. In this way, the Commission balances the desire to meaningfully improve the category two budget approach while minimizing the impact associated with such changes for the upcoming funding year. Thus, the new rules the Commission adopts for the category two budget approach will apply beginning in funding year 2021, at which time the budgets will reset for all applicants as the Commission moves to fixed five-year funding cycles, the first of which will run from funding years 2021 to 2025.

5. Based on a review of the record, the Commission first adopts its proposal to make the category two budget approach permanent, thus ensuring that the two-in-five rules will not come back into effect for any applicants following funding year 2019. Doing so is supported by the record and consistent with the findings of the Bureau's *Category Two Budget Report*. Commenters unanimously support the category two budget approach, and no commenter expressed a desire to return to the problematic two-in-five rules. In particular, commenters state that the benefits of the category two budget approach far outweigh any benefits of the alternative two-in-five rules approach. This view is consistent with the Bureau's finding that, since funding year 2015, funding has gone to all fifty states and all discount levels in a manner that more closely approximates the composition of participating schools and libraries in the E-Rate program overall.

6. Moreover, there is agreement that the category two budget approach "has led to wider, more robust deployment of broadband services within schools and libraries." Likewise, the category two budget approach has "enabled all applicants, regardless of their place on the E-Rate discount matrix, to receive funding for broadband equipment and services inside their school and library buildings." With respect to libraries, ALA observed that "for the first time in over fifteen years our libraries are assured of receiving C2 funding. The result is that all libraries, whether in rural remote areas or urban centers, have

access to much needed funding for their in-building network requirements.” Commenters also note that extending the category two budget approach permanently will give “both applicants and service providers confidence that category two funding will continue in a reliable and predictable manner.”

7. Finally, the record contains no evidence of any significant economic costs associated with a transition to a permanent category two budget approach. Accordingly, the economic benefits of transitioning to a permanent category two budget are expected to outweigh the costs. For all of these reasons, the Commission makes the category two budget approach permanent.

8. Recognizing that the category two budget approach, while successful during the five-year test period, can be improved upon, the Commission takes this opportunity to simplify the budgets and make category two funding even more effective than during the last five funding years. Specifically, beginning in funding year 2021, the Commission resets all applicant budgets and begin fixed five-year budget cycles. As part of this modification, the Commission also adopts district-wide and library system-wide budget calculations, which will relieve applicants of some of the most significant administrative burdens associated with the category two application process and management of the budgets. Furthermore, to ensure the needs of schools with low student counts and small libraries, particularly those in rural areas, are met and to promote their increased participation, the Commission increases the category two funding floor to \$25,000. The Commission maintains the per-student budget multipliers that served schools well during the five-year test period and adopt a single budget multiplier for libraries, all of which will be adjusted for inflation every five years. Additionally, the Commission makes managed internal broadband services, caching, and basic maintenance of internal connections permanently eligible, and confirm their eligibility for all applicants in funding year 2020.

9. First, to facilitate the transition to the new rules, the Commission will reset all budgets to the full amount eligible under the new rules, which will provide applicants the opportunity to deploy internal connections and make it easier for them to track their category two budgets in the new funding cycle. All applicants will start with a new five-year budget cycle beginning in funding year 2021,

regardless of whether they completed their previous five-year budget cycle during the test period.¹ The Commission agrees with commenters that resetting the budgets at the end of the test period will alleviate confusion, whereas rolling over remaining funds from the test period would be difficult to track given the changes to the rules and the budget calculations.

10. Next, as part of the improvements to the category two budget approach the Commission makes in this document, and to ease the administration of the budgets, the Commission adopts fixed five-year budget cycles, with the first such cycle running from funding year 2021 through funding year 2025. Applicants may submit applications in any funding year during this five-year cycle. In the *2019 Category Two Notice*, 84 FR 34107, July 17, 2019, the Commission sought comment on using rolling budgets, or setting fixed five-year budget cycles, as part of the permanent category two budget rules, and asked if fixed five-year cycles would be easier to administer. Commenters largely support fixed five-year cycles, noting that fixed budgets present the “clearest and cleanest approach,” and that a “simplified, fixed timeframe for budget expenditure for all applicants will alleviate much of the confusion” created by rolling budgets. The Commission agrees and now adopts fixed five-year budget cycles to simplify the administration of the budgets and eliminate a source of confusion for applicants. Fixed cycles also present natural beginning and ending points for budgets, making it easier to make changes and updates to the budgets in future funding years should the need to do so arise. These changes will allow for the smoothest transition to the new rules, and the Commission agrees with commenters who stated that the risks associated with a fresh start and fixed budgets are minimal.

11. The Commission notes that no commenter supported rolling budgets that begin the first year a school or library requests category two funding and look back four years, as described in the *2019 Category Two Notice*. Some commenters, however, supported rolling over unused funds from the five-year test period into new, fixed five-year cycles. The Commission concludes, however, that the administrative burden of carrying unused funds from one budget period to another far outweighs the benefits of doing so, and the program would be easier to administer with clear starting and ending points

¹ The budget reset applies to all applicants, including those applicants who were subject to the relief the Commission provided in the response to Hurricanes Harvey, Irma, and Maria.

to budget periods. Other commenters support rolling budgets to the extent that fixed budgets will present challenges with schools opening or closing during a five-year period. The Commission disagrees and finds instead that fixed five-year cycles present the simplest rules to administer, and in fact minimize the confusion caused by a school opening or closing mid-cycle. Under a rolling scenario, that school district's budget would need to reflect changes caused by a school opening or closing for an extended period of time, while fixed budget cycles reset at the conclusion of the five-year cycle, giving the district an opportunity to start fresh calculating its budget. Overall, the benefits some applicants may receive from carrying over a portion of unused funding, or from being able to start calculating budgets on a rolling basis, are outweighed by the ability of all applicants to calculate budgets on a clear, predictable basis, with established beginning and ending points that also present clear opportunities for future modifications, should the need arise.

12. Next, as part of the permanent rules that will go into effect in funding year 2021, the Commission adopts district-wide and library system-wide category two budgets—a change that nearly all commenters support. Specifically, school districts and library systems will now have a single budget to administer, and the district or library system will have the flexibility to allocate category two funding among its schools and libraries as it sees fit, vastly simplifying the planning and application process for category two services. This change will simplify some of the more complicated aspects of administering the budgets and applying for funding (such as dividing the costs of shared services among multiple entities, estimating student counts at new schools, and counting part-time students), without eliminating protections against waste, fraud, and abuse, which continue to apply with respect to each individual school and library included in the school district-wide and library system-wide budgets. In particular, calculating the budgets in this way will largely eliminate the need for applicants to maintain and administer separate budgets for each school or library in a district or library system and minimize instances where funding requests are delayed or denied because they exceeded the budget for a particular school or library. Further, as commenters noted, different schools have different technological needs, and a single district-level or system-level budget will allow the school district or library system to determine how best to account for these differences. By affording applicants the flexibility to determine how best to

allocate funding within their districts and library systems, the Commission ensures a more effective use of E-Rate funds.

13. In adopting district-wide budgets, the Commission provides general guidance on what constitutes a “school district.” Given that applicants are likely to be in the best position to apply this guidance to their particular circumstances, the Commission does not strictly define the term for the purposes of applying for and calculating a district-wide budget. In response to the Commission’s request for comment on how applicants and USAC should determine which entities are part of a school district for calculating category two budgets, the Commission received several comments, but no clear consensus. To provide administrative ease and flexibility to account for differing scenarios and consistent with the manner in which applicants currently calculate district-wide discount rates, applicants should consider all schools that fall under the control of a central administrative agency as a district for the purpose of calculating a shared, district-wide budget.

14. Under this approach, private schools and charter schools that operate independently of a public school district or a central administrative agency, and are individually responsible for their finances and administration, should separately calculate their category two budgets and apply for funding. Independent charter schools, private schools, and other eligible educational facilities that seek support for more than one school building should factor all students in facilities under the control of their central administrative agency or entity into the category two budget calculation. For example, if a group of parochial schools shares administration and finances, they should calculate a single, “district-wide” category two budget for all students under the central administrative entity or agency.

15. To address issues that may arise regarding changes to school districts and library systems during a five-year budget cycle, as well as issues that may arise in accommodating states’ varied definitions of school or library districts, the Commission directs the Bureau to provide clarifying guidance consistent with the terms of the Order, and publish clarifications or additional guidance with respect to the implementation and administration of district-wide and library system-wide category two budgets to the extent necessary.

16. *Full-Time Enrollment.* In another effort to streamline both the application filing and

review process, going forward the Commission will base student counts on full-time enrollment only and eliminate the need for schools or school districts to count part-time students in their enrollment numbers. Commenters support this change as a simplification that stems from district-wide budgets. More specifically, because the district-wide budgets will allow school districts greater flexibility in allocating category two support, it is no longer necessary for schools with lower full-time enrollment, but high part-time enrollment to take the often difficult and time-consuming steps to count and verify their part-time enrollment numbers in order to obtain category two funding. Using district-wide budgets, the Commission believes that all schools in a district will have adequate support to ensure appropriate deployment of local area networks.

17. The Commission also will no longer permit school districts to estimate the number of students for buildings under construction because those students will otherwise be accounted for by the district enrollment numbers. However, an independent school with its own entity-level budget will still be allowed to estimate its enrollment numbers in order to be able to request category two support while construction is underway. As presently required by the Commission's rules, if an applicant overestimates the number of students who enroll in that school, it must return to USAC any funding in excess of that which it was entitled based on the actual enrollment by the end of the next funding year.

18. To ensure that all E-Rate applicants, including small schools and libraries in rural areas, have the funding they need to deploy their internal connections networks within the existing E-Rate program budget for category two services, the Commission takes several steps to make access to category two funding more equitable and, in turn, result in a more consistent distribution of support for small, rural schools and libraries. First, the Commission raises the category two budget funding floor from \$9,200 to \$25,000. Second, the Commission eliminates the funding disparity between urban and rural libraries inherent in the current bifurcated approach that disadvantages rural libraries and adopt a unified budget multiplier for all libraries.

19. *Funding Floor.* To ensure that small schools and libraries have sufficient funding to deploy their internal connections, the Commission increases the funding floor to a pre-discount level of \$25,000 over the five-year funding cycle beginning in funding year 2021. In the *2019 Category Two*

Notice, the Commission sought comment on whether the funding floor should be increased to \$25,000.

The Commission agrees with commenters that the existing funding floor level of \$9,200, combined with the overall administrative burden of requesting category two support, resulted in a low participation rate by small and rural entities with low student enrollment or small square footage. For instance, from funding year 2015 through funding year 2019, school sites nationwide, on average, used 60% of their category two funding support, but small sites that only qualify for the funding floor, on average, used only 33% of their category two funding support, in large part because so little funding was available to them or because the benefits of the funding at the floor were often lower than the costs associated with the application process.

20. To illustrate why few entities at the funding floor (which include many rural schools and libraries) took advantage of category two funding during the five-year test period, the Commission considers a small school at an 85% discount rate with 61 students. During that period, which set the budget floor at \$9,200, such a school would have been eligible to receive category two support of just \$7,820 despite having many of the same technical needs for its Wi-Fi networks as larger schools. In fact, one commenter estimates that it would cost \$24,350 to deploy switches, wireless access points, wireless access point controllers, routers, and cabling to a small school with 61 students. The Commission agrees with those commenters that argue that a budget floor of \$25,000 is sufficient to ensure that those small sites that previously did not participate can deploy internal connections networks. With a \$25,000 funding floor, that same small school at an 85% discount rate will receive \$21,250 in E-Rate support. The Commission expects that this additional funding, in addition to the increased flexibility of district-wide and library system-wide budgeting generally, will make it attractive and beneficial for small schools and libraries to take advantage of category two funding support. And the Commission finds that this increase in the funding floor can be done within the existing E-Rate program budget for category two services in combination with its other reforms to the category two budget approach.

21. *School Multiplier*. Consistent with the findings in the *Category Two Budget Report*, the Commission continues to believe that the existing category two budget mechanism is generally sufficient for schools, and thus the Commission adopts its proposal to maintain the \$150 per student school budget

multiplier adjusted for inflation from the five-year test period, and—for administrative simplicity—adjust that amount (\$166.44) up to \$167 per student for the new five-year funding cycle beginning in funding year 2021. The Commission finds that maintaining the same per-student level of support as was available in the previous category two budget cycle is sufficient to meet schools’ internal connections needs. This level of support enabled 85% of school sites to receive category two funding support during the funding year 2015 through funding year 2019 budget cycle. Many schools required less funding than the \$167 per student budget multiplier the Commission adopts in this document—in fact, 50% of schools used less than \$131 per student over those five years.

22. Some commenters argue that a higher budget multiplier is needed for schools to build their Wi-Fi networks. The Commission disagrees. The Commission finds that increasing per-student budgets beyond the rate of inflation is not necessary at this juncture, particularly given the other changes the Commission makes to the category two budget approach in the Order. In fact, the Commission believes that the changes made in this document will lead to additional category two funding support being available for those schools that need it.

23. The streamlined district-wide budget approach the Commission adopts in this document empowers school districts to allocate category two funding support to the sites that need it most. Entity-specific budgets have constrained category two funding support to be directed to specific sites based on enrollment numbers or square footage without the ability to make adjustments for level of need. If there was a school in a district that required less than the per-site budget allocation to deploy a Wi-Fi network and another school in the district that required more than the per-site allocation, the district could not re-direct the unused funding to complete the more expensive network, which meant that part of the category two budget support for the district went unspent and an identified need went unmet. Implementing district-wide budgets lifts this restriction and allows applicants to allocate category two funding to the sites that most need it, which, in turn, permits them to take advantage of a greater portion of their category two budgets. For example, Funds For Learning estimates that adopting school district and library system-wide budgets will make an additional \$94.1 million per year in category two funding available to applicants. Further, by increasing the funding floor, the Commission is providing additional category two

funds to some of the smallest schools in the country. As a result, under the Commission's new approach, these small schools do not need an increase in the per-student allocation to receive an increase in the category two funding available to them.

24. *Library Multiplier.* To eliminate the funding disparity between rural and urban libraries inherent in the existing bifurcated approach to calculating budgets for libraries and to ease administration, the Commission establishes a single pre-discount budget multiplier for all libraries of \$4.50 per square foot over the five-year funding cycle beginning in funding year 2021. Currently, the library multipliers differ based on geography. Specifically, libraries located in cities and urbanized areas with a population of 250,000 or more, as identified by the Institute of Museum and Library Services (IMLS) locale codes of 11, 12, and 21, receive \$5.00 per square foot, adjusted annually for inflation, and libraries in all other locations receive \$2.30 per square foot, adjusted annually for inflation.

25. As demonstrated by the record, the cost to deploy a Wi-Fi network does not vary significantly based on geography. As internal connections are provided *within* school and library buildings, which are similar regardless of location, the Commission is now persuaded by experience from the test period that the costs to install the equipment and the type of equipment needed to provide connections within these buildings should also be comparable regardless of location. Indeed, some commenters contend that internal connections deployment costs are higher in rural areas than urban areas, and even those commenters that favor a higher budget multiplier for libraries in highly-concentrated urban areas recognize that an increase in the budget multiplier for rural libraries is needed. Accordingly, the Commission finds that experience has not borne out the prediction that costs would be higher and the need for support would be greater in highly concentrated urban areas than for libraries in the rest of the country.

26. Moreover, the Commission's experience during the five-year test period shows that a lower budget multiplier for rural applicants creates a considerable disparity in access to the amount of category two funding support available for rural libraries. As the Bureau's *Category Two Budget Report* found, rural libraries seek category two funding support at a much lower rate than urban libraries. Commenters attributed rural libraries' lack of participation to insufficient budgets and recommended an

increase to the multiplier for rural libraries. Raising the budget multiplier for libraries outside of highly-concentrated urban areas, therefore, is a necessary step towards ensuring that they have sufficient funding to deploy their internal connections.

27. Finally, setting a single budget multiplier for all libraries simplifies the library budget calculations for applicants and will reduce the application review burden for USAC. Without the need to determine the IMLS locale code for each E-Rate supported library and the overall budget multiplier for a library system, applicants and USAC should be able to increase the efficiency and pace of the filing and processing of applications.

28. To provide a single budget multiplier for all libraries within the existing budget, the Commission adopts a pre-discount multiplier of \$4.50 per square foot for all libraries. The Commission calculated this number, first, by estimating the potential total of all pre-discount library budgets from funding year 2015 to funding year 2019 using all public libraries. The Commission then divided this potential total of all pre-discount library budgets by the total square footage of all public libraries. The Commission provided a slight upward adjustment to \$4.50 per square foot to reflect the anticipated participation rates of libraries requesting category two funding under the E-Rate program. This new budget multiplier, coupled with the increased funding floor, will make additional category two support available for those small and rural libraries that did not participate during the five-year test period.

29. The Commission's experience indicates that a pre-discount multiplier of \$4.50 per square foot will minimally impact libraries in highly concentrated urban areas while providing sufficient additional funding to enable other libraries to deploy internal connections networks. Given that 91% of libraries in highly concentrated urban areas used less than \$3.99 per square foot from funding years 2015 through 2019, the Commission expects that this reduction will affect only a small proportion of libraries in those areas. Indeed, those applicants will still be under budget, even with a budget of \$4.50 per square foot. Moreover, as with schools, introducing library system-wide budgets will give library systems enhanced flexibility to allocate funding throughout their sites as they see fit, and raising the funding floor will provide greater funding for small libraries, even if their per square foot allocations are reduced slightly.

30. *Calculating District-Wide and Library System-Wide Budgets.* Based on the changes to the budget multipliers and funding floor the Commission makes in this document, the Commission details how applicants will calculate their budgets under the district-wide and library system-wide budget methodology. Specifically, to ease administration and to recognize that school and library systems are in fact systems with generally unified budgets that have the ability to direct support to whatever school or library in the system needs it most, the Commission requires school districts and library systems to calculate total budgets using their aggregate student count or square footage and the “aggregate funding floor” (i.e., the aggregate number of schools or libraries times the funding floor).² Therefore, a school district or library system need only determine the aggregate number of students or square footage throughout the system as well as the total number of eligible schools and libraries in the system, without detailing the precise number of students or square footage attributable to any individual school or library. The Commission expects most school districts and library systems to receive funding significantly above the aggregate funding floor and to appropriately allocate funds to those that need it most. In addition, the Commission recognizes that smaller school districts and library systems have less access to shared resources and are more likely to be located in rural areas where funding is scarce. As such, the Commission creates an exception for small school districts and library systems. Specifically, the Commission gives school districts and library systems with 10 or fewer sites the option to calculate their budgets on a per-site basis by adding together the budgets of each eligible site within the district or library system.

31. To illustrate how the calculation would work, the Commission considers a school district with five schools, three of which have 200 students each and two of which have 100 students each. Using the \$167 budget multiplier for schools and the \$25,000 funding floor for funding year 2021, the school district would have a total pre-discount budget of \$150,200, to spend across the five schools over the five-

² In other words, a school district with 10,000 students would normally have an aggregate budget of \$1,670,000. If those students were spread across 100 schools, then its budget would instead be \$2,500,000 (the aggregate funding floor). Accordingly, the funding floor only comes into play if the aggregate budget for the system would fall under the aggregate funding floor for the system.

year period.³ Giving small systems this option will ensure that small, rural school districts and library systems can take full advantage of the increased funding floor, with only minimal increases to administrative complexity for applicants and for USAC.⁴

32. *Inflation Adjustment.* For both budget multipliers and the funding floor, the Commission amends its rules to make a one-time adjustment for inflation before the start of the filing window for each five-year funding cycle. Commenters generally agree that a one-time inflation adjustment over a five-year cycle will reduce confusion surrounding the category two budget calculations, although commenters suggested different approaches for calculating inflation. The Commission rejects suggestions that use either predictions or other inflation indicators as too complex. Instead, the Commission finds that the simplest, most effective, and most accurate approach is to adjust for inflation before the start of the filing window for each five-year funding cycle, providing notice to applicants about the upcoming budget multipliers and funding floor. Adjusting for inflation in this way will simplify the budget calculation, and will ensure that subsequent five-year funding cycles accurately reflect historical inflation rates. To ensure that applicants know their budgets well in advance of funding year 2021, the Commission announces the budget multipliers and the funding floor in the Order. The Commission's calculations of the budget multipliers and funding floor account for future inflation through funding year 2021 using estimated inflation adjustments. Accordingly, these figures will not be further adjusted for inflation between now

³ Each school with 100 students would be eligible for a \$16,700 budget (which is less than what they would receive under the funding floor) and each school with 200 students would be eligible for a \$33,400 budget. Hence the aggregate budget here is $2 \times \$25,000 + 3 \times \$33,400 = \$150,200$. Without this exception, the school district's aggregate budget would be determined by multiplying the aggregate number of students in the district ($(3 \times 200) + (2 \times 100) = 800$) by the school multiplier (\$167). Hence, the aggregate budget would be $800 \times \$167 = \$133,600$, which is less than what the district's budget would be under the exception.

⁴ Although the Commission recognizes that allowing site-by-site calculations increases the number of auditable issues for applicants and USAC and could lead some applicants to shuffle headcounts to maximize support, they find such concerns of little consequence for the smaller school districts and library systems for which this option was created. The Commission's experience with USAC audits persuades the Commission that the administrative burdens on USAC are likely to be manageable if the Commission limit this option to school districts and library systems with 10 or fewer locations, particularly given that those districts and systems present fewer opportunities for shifting headcount and, on that basis, gaming the funding support rules. Thus, although the record does not enable the Commission to precisely identify the "ideal" number of locations at which to draw this line, the Commission finds that its choice of 10 or fewer reasonably balances its interest in managing the administrative burden of the program and guarding against the risk of gaming.

and the funding year 2021 filing window, or again during this initial five-year funding cycle.⁵

33. For future funding years, before the start of every five-year funding cycle, the Commission directs the Bureau to calculate and announce the inflation adjustments. Specifically, the Bureau will announce the budget multipliers and funding floor as adjusted for inflation at least 60 days before the start of the filing window for the next five-year funding cycle. For funding year 2026 and beyond, the Commission shall use the last four quarters of available data on the Gross Domestic Product Chain-type Price Index (GDP-CPI) compared with the equivalent quarters from the beginning of the five-year funding cycle. The increase shall be rounded to the nearest 0.1% and shall be used to calculate the category two budget multipliers and funding floor for that five-year funding cycle. The budget multipliers and funding floor will also be rounded to the nearest cent to eliminate confusion surrounding the calculation, as supported by commenters.

34. *Student Counts and Square Footage.* To further reduce administrative burdens, and consistent with the record, the Commission will require applicants to provide student counts and library square footage for schools and libraries only once (calculated at the time that the discount is calculated that funding year) during a five-year funding cycle beginning with the first such cycle that starts in funding year 2021. Specifically, under the fixed, five-year budgets the Commission adopts in this document, the Commission will require applicants to validate their student counts or library square footage for each school and library in the district or library system in the first year an applicant applies for category two support during the relevant five-year cycle. Applicants, if they choose to do so, can update their student counts or square footage information in subsequent funding years to reflect, for example, an increased budget due to increased student enrollment. Applicants, however, are not required to do so, and can instead keep the student count and square footage information for the entire five years of the budget cycle. The Commission notes, contrary to what was suggested in the record, that the requirement that the category two budget enrollment numbers only be validated once every five years has no impact on the requirement that schools update their enrollment and National School Lunch Program or Community

⁵ Specifically, as discussed above, the Commission establishes a school budget multiplier of \$167, a library budget multiplier of \$4.50, and a funding floor of \$25,000 for funding year 2021.

Eligibility Provision numbers for purposes of calculating discount rates each year.

35. In the *2019 Category Two Notice*, the Commission proposed to permanently extend the eligibility of managed internal broadband services, caching, and basic maintenance of internal connections under a category two budget approach consistent with the Commission's determination in 2014 to make these services eligible for support through funding year 2019. Commenters expressed broad support for retaining the eligibility of these three services. Consistent with the Commission's determinations in the *2014 First E-Rate Order*, 79 FR 49160, August 19, 2014, it finds that category two budgets allay concerns about wasteful spending on these three services, and the Commission therefore sees continued benefit for the functionality of networks within schools and libraries in making these services eligible for category two support. Accordingly, the Commission adopts the proposal to make these services eligible for category two support under the permanent category two budget approach.

36. The *2019 Category Two Notice* sought comment on whether additional services should be made eligible for category two funding. In response, commenters urged the Commission to make eligible several additional services. For example, several commenters requested that the Commission makes eligible under category two the filtering technology necessary for compliance with the Children's Internet Protection Act. But the Commission has previously explained that the Children's Internet Protection Act prohibits recipients from obtaining discounts under the universal service support mechanism for the purchase or acquisition of technology protection measures necessary for compliance with the Children's Internet Protection Act. Others requested that the Commission makes eligible services that it has either previously made ineligible or that the Commission has previously declined to make eligible. The Commission declines to make additional services eligible under category two so that E-Rate eligible entities continue to focus requests for category two funding on the internal connections that are truly necessary to deliver high-speed broadband to students and library patrons via local area networks and wireless local area networks, consistent with the Commission's reasoning in the *2014 First E-Rate Order*. And the Commission finds that the requests of still other commenters to make additional services eligible for category one support are beyond the scope of this proceeding.

37. At the request of several commenters, the Commission directs the Bureau to address

ongoing issues related to the application of its eligible services rules with respect to category two services by providing clarifications in instances where the terminology used in the Commission's rules does not align with the terminology used by service providers in the context of bid responses and invoicing or has otherwise caused applicant uncertainty or confusion about how to request category two services.

38. *Equipment Transfer Rule.* Consistent with the Commission's efforts to streamline the process for requesting support for category two services, it now eases the Commission's equipment transfer rule to lessen the paperwork burden on school districts and library systems. As the Commission stated in the *2019 Category Two Notice*, and supported by the record, the original concerns that led to the adoption of a prohibition on equipment transfers for a period of three years after purchase—namely, that applicants might replace or upgrade their equipment more often than necessary or to circumvent the then-existent two-in-five rules—are no longer relevant under a district-wide and library system-wide category two budget approach. Under the district-wide and library system-wide category two budget approach, the category two purchases for all individual schools within the district fall under the same budget, so there will no longer be the incentive to purchase a piece of equipment for one site and move it to another. This incentive existed under the two-in-five rules because there were limits on the internal connections funding that each individual school could receive. Under those rules, if an individual school did not request equipment when it had the opportunity to do so, another school in the same district could circumvent the two-in-five rule by requesting that equipment and moving it to the facility where it was needed. As the two-in-five rules no longer apply, the provisions of the equipment transfer rules that prevent its circumvention are no longer needed.

39. The Commission therefore modifies section 54.513(d) of the Commission's rules, effective for funding year 2021, to allow districts and library systems to transfer equipment between schools within a district and libraries within a system. Importantly, transferors no longer must notify USAC of the transfer, but both the transferor and recipient must maintain detailed records documenting the transfer and the reason for the transfer for a period of five years as required by the Commission's rules. Additionally, as a reminder to all applicants, under section 54.516(a) of the Commission's rules, schools, libraries, and consortia are required to maintain asset and inventory records of equipment

purchased and the actual locations of such equipment for a period of 10 years after purchase.

40. *Non-Instructional Facilities.* In the *2019 Category Two Notice*, the Commission noted that the cost allocation of the shared costs of a piece of equipment located in a non-instructional facility could be more easily handled in a district-wide category two budget because the district-wide approach relieves the burden of allocating costs among the budgets of eligible entities. Under the per-entity budget rules, district-wide applicants requesting funding for equipment that would be shared district-wide but housed in a non-instructional facility determined each school's use of the shared equipment as well as the non-instructional building's use of the shared equipment, deducted the cost of the non-instructional building's use of the shared equipment, and submitted funding requests from each school for each portion of eligible funding. USAC then reviewed each funding request to ensure that funding is only provided for equipment used by eligible entities. Under the district-wide budget approach adopted in this document, applicants will only need to deduct the cost of the non-instructional facility's use of the shared network equipment.

41. In response to the *2019 Category Two Notice*, commenters agreed that cost allocation of the use of shared equipment is burdensome, and requested that the Commission allow all buildings associated within a district or library system, including non-instructional facilities, to qualify for category two funding support because the category two budget places a ceiling on the amount that can be spent on category two services. The Commission declines to modify its rules regarding whether non-instructional facilities or the administrative buildings of libraries qualify for category two funding support. The district-wide budgets the Commission adopts in this document will reduce the administrative burden on applicants that use non-instructional facilities or other administrative buildings to house network equipment shared district-wide and will make it easier for USAC to review such requests by eliminating the need to allocate among eligible entities in a district. However, the Commission is not persuaded that the administrative burden associated with deducting the cost of the non-instructional building's use of shared network equipment warrants eliminating a rule designed to ensure that E-Rate support is only provided to eligible entities for eligible purposes. The relatively simple task of subtracting the cost of the non-instructional facility's use of the shared network element is unlikely to significantly burden either

applicants or USAC. Accordingly, the Commission will continue to require applicants to deduct the cost of non-instructional facilities' use of shared equipment from their requests for E-Rate support, as required by the current rules.

42. In this document, the Commission extends the five-year test period for the category two budget approach through funding year 2020 and provide a prorated portion of category two funding for each applicant for that additional year. This approach ensures a smooth transition to the permanent rules effective in 2021 while providing applicants with sufficient funding to deploy internal connections in funding year 2020.

43. In the *2019 Category Two Notice*, the Commission sought comment on using funding year 2020 as a bridge year between the five-year test period and the permanent extension of the category two budget approach. The Commission has weighed the costs and benefits of attempting to allow applicants to begin requesting E-Rate program support for category two services under these permanent rules—including the district-wide approach it adopts in this document—in funding year 2020 and finds that the costs of doing so far outweigh the benefits. In particular, implementing new rules for funding year 2020 would likely cause delays in funding commitments, and USAC would likely need to conduct manual application reviews to accommodate any rule changes. The Commission therefore adopts rules extending the five-year test period by one additional year and provide prorated E-Rate support for funding year 2020 while the Bureau and USAC take the necessary steps to ensure effective implementation of the permanent rules beginning funding year 2021. By extending the test period into funding year 2020, and making additional category two support available during that funding year, the Commission provides needed certainty and predictability to E-Rate participants while allowing the Commission and USAC adequate time to implement and ensure a smooth transition to the permanent rules the Commission adopts in this document.

44. First, to implement the permanent rules, the Commission recognizes that they and USAC will need time to update (1) E-Rate program forms in compliance with the Paperwork Reduction Act; (2) USAC's IT systems, including the E-Rate Productivity Center (EPC), to track the district-wide and library system-wide budgets and ensure funding requests that are over budget are reduced; and

(3) administrative processes, such as Program Integrity Assurance procedures, to ensure consistent review for all five years of the funding cycle. Implementing the Commission's new rules as quickly as possible will, at best, take them into next year before completion. While SECA and SHLB suggest that USAC perform manual workarounds, including performing manual calculations of district-wide and library-wide budgets, the Commission disagrees. Doing so would require USAC to make such calculations for approximately 50,000 schools. Moreover, manual review of applications in the first year of a five-year funding cycle introduces risks of improper payments and the potential inability for USAC to properly track the category two budgets until the end of the funding cycle. Because these are fixed five-year budgets, any error that occurs in the first funding year has the potential to impact multiple funding years. Such an outcome would introduce further complexity and thus directly contradict the Commission's overall goal to simplify and streamline the category two budget approach.

45. Moreover, implementation of new rules has a strong potential to significantly delay the application filing window for funding year 2020. Despite the statements from some commenters that this months-long delay would be preferable to the community, the Commission finds that the potential harms, including delaying commitments for category one funding requests—which, this funding year, represented nearly \$2 billion's worth of high-speed broadband service and equipment—are unacceptable. A delay in funding commitments would create delays in the deployment of E-Rate supported services, to the detriment of schools and libraries.

46. The Commission also is unpersuaded by arguments that extending the five-year test period will cause more confusion than rushing the implementation of the permanent rules with insufficient outreach to stakeholders. Instead, to give certainty to applicants in advance of the expected opening of the filing window for funding year 2020 and to smooth the transition to new, permanent rules, the Commission finds that the public interest would be served by an extension of the test period through funding year 2020. Since funding year 2015, over 90,000 schools and 4,900 libraries have used category two support to deploy Wi-Fi networks for the benefit of students and library patrons. The Commission largely makes no changes to how applicants should apply for support for category two services in funding year 2020, allowing applicants to move forward using their existing knowledge of the category two

budget approach and providing an amount of funding equivalent to a single funding year's budget to aid applicants whose budgets would have ended in funding year 2019. The Commission also sets its clear guidance on the budget calculations for funding year 2021, allowing applicants to begin much-needed technology planning.

47. The Commission finds that the benefits of clear rules for funding year 2021 strongly outweigh the costs and risks associated with new rules implemented without adequate outreach to applicants and subsequent delays in funding commitments. By using funding year 2020 as a bridge to a permanent set of rules for category two services, the Commission will be able to ensure that the permanent rule changes are carefully and thoroughly implemented and administered, and that applicants are given a smooth transition period and notice for planning technology changes or upgrades. As a result of the Commission's extension of the test period, all applicants will continue to be able to request category two support under the existing category two budget approach in funding year 2020, and the Commission will not revert back to the two-in-five rules for any applicants.

48. The Commission provides a prorated portion of category two funding to all applicants in funding year 2020, which it will treat as a sixth year of the test period. In the *2014 First E-Rate Order*, the Commission established a pre-discount category two budget for schools of \$150 per student over five funding years, or 20% of the total funding per student annually. Accordingly, in extending the five-year test period by an additional year, the Commission provides an additional 20% in funding to schools and libraries, as well as to the funding floor. The Commission directs the Bureau to release updates to the category two budget multipliers and funding floor for the test period, adjusted for inflation and proration and rounded to the nearest cent, consistent with the Order, within 15 days of publication of the Order in the *Federal Register*. As in previous years of the test period, the available category two funding that will be available to applicants in funding year 2020 will be the updated budget multipliers and funding floor that the Bureau calculates minus the category two funding that applicants spent earlier in the test period.⁶

49. This action will ensure that all applicants, including those who have exhausted their

⁶ The Commission notes that this same calculation is applicable to applicants whose category two budget was reset based on relief the Commission granted in the *2017 Hurricane Relief Order*, 82 FR 55767, November 24, 2017.

category two budgets or completed their five-year budget cycles, can request category two support in funding year 2020. While ALA argued against making additional funds available during a bridge year, the Commission finds providing support for this one funding year more equitable and appropriate than denying funding to applicants that in good faith managed their five-year budgets over a five-year period (and did not anticipate a sixth year).

50. Moreover, this approach is consistent with the Commission's intent in the *2014 First E-Rate Order* to provide approximately \$1 billion per year in category two support to ensure applicants had access to funding for internal connections on a predictable, consistent, and equitable basis. Demand for category two services has tracked closely to this initial target. By providing a prorated portion of funding for funding year 2020, the Commission can make available approximately \$1 billion for category two services, providing applicants with funding that may be needed to maintain their local area networks while the Commission transitions to permanent category two rules. The Commission also finds that providing a prorated portion of category two funding to all applicants treats all entities equitably because every entity will be eligible for the same amount of category two support during the six-year test period. Finally, this approach provides both applicants and USAC with a single calculation for all entities, which simplifies the administration in funding year 2020 for requesting and reviewing category two funding requests and reduces the chances of overpayments.

51. The Commission finds that good cause exists here to make those portions of the Order that codify the permanent eligibility of managed internal broadband services, caching, and basic maintenance of internal connections for support in funding year 2020 and beyond and the proration of budget multipliers and the funding floor for funding year 2020 effective upon publication in the *Federal Register*. A rule may be made effective prior to thirty days from publication in the *Federal Register* for good cause found and published with the rule. Here, to ensure that applicants have sufficient notice of the services that will be eligible and the prorated funding that will be available to them before they file their funding year 2020 applications, it is necessary to implement those portions of the Order as soon as possible following release of the Order. The filing window for E-Rate funding applications typically opens in mid-January each year to ensure adequate time for USAC to process such applications and issue

funding commitments or denials. Therefore, in light of the need to enable the release of the Eligible Services List and notification of budget multipliers and the funding floor with sufficient time to make applicants aware of what services are eligible and the amount of support available before the opening of the filing window, the Commission finds that good cause exists to make the portions of the Order addressing eligible services and proration of budget multipliers and the funding floor for funding year 2020 effective upon publication in the *Federal Register*. Moreover, making the eligibility of managed internal broadband service, caching, and basic maintenance of internal connections and the budget multipliers and a funding floor for funding year 2020 effective immediately will not impose any implementation burden on applicants given that these services were eligible and budget multipliers and a funding floor were used during the initial five-year test period.

52. In addition, to ensure that the application filing window for funding year 2020 is not unduly delayed by implementation of the Commission's decisions herein, it waives the requirement in section 54.502(d) of the Commission's rules that the Eligible Services List be released at least 60 days prior to the opening of the application filing window. Section 1.3 of the Commission's rules allows the Commission to waive a rule on its own motion for good cause shown. The Bureau may find it necessary to release the Eligible Services List less than 60 days before the opening of the application filing window to ensure that the filing window opens with enough time to allow USAC to process applications for funding year 2020. Applicants will benefit from this waiver because it will help to ensure that their applications are processed in a timely manner. The Commission finds that the adoption of the Order at this time and its impact on a number of eligible services constitute special circumstances that warrant waiver of the 60-day requirement, and that doing so is in the public interest.

III. PROCEDURAL MATTERS

A. Paperwork Reduction Analysis

53. This document contains new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new and modified information

collection requirements contained in the proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, it previously sought specific comment on how the Commission might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

B. Congressional Review Act

54. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is “non-major” under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of the Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

55. As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, the Federal Communications Commission (Commission) included an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *2019 Category Two Notice* in WC Docket No. 13-184. The Commission sought written public comment on the proposals in the *2019 Category Two Notice*, including comment on the IRFA. The Commission did not receive any relevant comments in response to the IRFA. The Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

56. The Commission is required by Section 254 of the Communications Act of 1934, as amended, to promulgate rules to implement the universal service provisions of Section 254. On May 8, 1997, the Commission adopted rules to reform its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. Specifically, under the schools and libraries universal service support mechanism, also known as the E-Rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may receive discounts for eligible telecommunications services, Internet access, and internal connections.

57. Taking steps to close the digital divide is a top priority for the Commission. The E-Rate program provides a vital source of support to schools and libraries, ensuring that students and library patrons across the nation have access to high-speed broadband and essential communications services. In the Order, the Commission permanently extends the category two budget approach and adopts several

proposals that will reduce the burden on small entities, such as a move to district-wide or library-system wide budgets and fixed budget cycles to allow careful planning from E-Rate applicants. The Commission also extends the five-year test period for the category two budget approach for a sixth year to include funding year 2020 to provide funding for applicants in funding year 2020 while the Commission and USAC implement permanent rules for funding year 2021. During this funding year, with limited exceptions, the existing category two budget rules will continue to be in effect. Permanent rules for the category two budget approach to go into effect in funding year 2021.

58. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules, as adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

59. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission’s actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.

60. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).

61. Finally, the small entity described as a “small governmental jurisdiction” is defined

generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2012 Census of Governments indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37,132 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000. Based on this data the Commission estimates that at least 49,316 local government jurisdictions fall in the category of “small governmental jurisdictions.”

62. The small entities that may be affected are Schools and Libraries, Telecommunications Service Providers, Internet Service Providers (ISPs), and Vendors of Internal Connections.

63. The Commission expects that the rules adopted in the Order will result in modified reporting, recordkeeping, or other compliance requirements for small or large entities. The Order takes two major actions. First, it permanently extends the existing category two budget approach for all entities, while adopting a number of steps to simplify how applications for category two services are filed, reviewed, and ultimately invoiced beginning in funding year 2021. These changes will result in modifications to information collections that decrease the compliance costs for small entities. And, second, it adopts rules extending the current five-year funding cycle for one additional year into for funding year 2020 to ensure that support for category two services is available and funding for other services are not delayed. For the funding year 2020 rules, both small and large entities will apply for category two funding in the same manner as in previous years with no changes to reporting, recordkeeping, or other compliance requirements. The Commission does not believe that small entities will have to hire attorneys, engineers, consultants, or other professionals to comply.

64. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting

requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”

65. In the Order, the Commission has taken steps to minimize the economic impact on small entities with the rule changes that it has adopted by permanently extending the category two budget approach and working to simplify the administration of the budgets. In the following, the Commission outlines many of the adopted simplifications that will aid small entities in compliance.

66. *District-Wide or Library System-Wide Budgets.* The Commission adopts a rule providing that school districts and library systems shall calculate their budgets for the entire district or system, allowing applicants to use funds efficiently at the schools and libraries that need the funding. This dramatically reduces the requirements for the application review process, including, but not limited to, eliminating reporting of part-time students, eliminating complicated cost allocations for equipment that is shared by members of a district or system, and overall simplification of the application process from start to finish.

67. *Modification of the Equipment Transfer Rule.* In addition to the district- and system-wide budgets, the Commission amends its rule allowing districts and systems to transfer equipment among their own schools and libraries and eliminating the need to report such transfers to USAC. This removes a reporting requirement for all applicants, but keeps rules in place that requires schools and libraries to maintain asset inventories of all E-Rate supported equipment.

68. *Modification of the Library Budget Multiplier.* The Commission amends its rules to have a single library budget multiplier. Currently, there are two multipliers, depending on the urban status of the library. A single multiplier allows for a simpler calculation of the library budgets, streamlining the application and its review.

69. *Increase of the Funding Floor.* The Commission adopts an increase in the funding floor, which is aimed at encouraging participation by small entities. Many commenters argued that the burden of program compliance outweighed the benefit of receiving the current funding floor, which was also

inadequate to meet their needs. Increasing the funding floor and simplifying the category two budget approach will allow more small entities to participate.

70. *Simplification of the Budget Calculation.* The Commission adopts fixed, five-year budgets that refresh every five years, eliminating the need for applicants and USAC to calculate the budgets annually with a series of different variables including inflation, changing student counts, and funding years at issue. This dramatically decreases the burden on applicants to calculate the budget and apply for E-Rate support.

71. The Order also extends the five-year test period for the category two budget approach into a sixth year and sets out the budget calculation in the Order to simplify how to calculate the amount of funding available to applicants in advance of the funding year 2020 filing window. While stakeholders advocated for a faster transition to the new rules as an alternative to rules for one funding year, the Commission finds that this approach causes the least disruption to the overall program and provides it and USAC with sufficient time and resources to successfully implement the many permanent changes the Commission adopts for funding year 2021. The Commission takes steps to minimize the burden of the funding year 2020 rules by simplifying the budget calculation slightly and otherwise maintaining current category two budget rules. As a result, there is no additional burden or cost to small entities because the program rules that are familiar to them are unchanged. Further, absent the rule changes in the Order, the category two budget rules would begin to sunset in funding year 2020, meaning that small entities would have to navigate two sets of rules. The rule changes in the Order prevent this sunset from taking place, thus preventing a potential source of burden and cost to small entities.

IV. ORDERING CLAUSES

72. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1 through 4, 201 through 202, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151-154, 201-202, 254, 303(r), and 403, the Order IS ADOPTED, and § 54.502(c) of the Commission's rules, 47 CFR 54.502(c), is AMENDED as set forth in the following, and such rule amendments shall be effective thirty (30) days after the publication of the Order in the *Federal Register*, except amendments to the budget multipliers and funding floor, which shall be effective immediately and

except to the extent expressly addressed in the following.

73. IT IS FURTHER ORDERED, that pursuant to the authority contained in sections 1 through 4, 201 through 202, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151-154, 201-202, 254, 303(r), and 403, §§ 54.502(d)-(e) and 54.513(d) of the Commission's rules, 47 CFR 54.502(d)-(e) and 54.513(d), ARE AMENDED as set forth in the following, effective upon announcement of approval by OMB under the Paperwork Reduction Act. The Commission directs the Bureau to announce the effective date for these information collections in a document published in the *Federal Register* announcing OMB approval.

74. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1 through 4, 201 through 202, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151-154, 201-202, 254, 303(r), and 403, sections of the Order addressing eligible services and proration of budgets for funding year 2020 in paragraphs 35, 36, and 48 SHALL BECOME EFFECTIVE immediately upon publication of the Order in the *Federal Register*, pursuant to 5 U.S.C. 553(d)(3); and 47 CFR 1.427(b).

75. IT IS FURTHER ORDERED, that pursuant to the authority contained in sections 1 through 4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151-154 and 254, and pursuant to the authority in § 1.3 of the Commission's rules, 47 CFR 1.3, that § 54.502(d), 47 CFR 54.502(d) IS WAIVED, and such waiver SHALL BECOME EFFECTIVE upon release.

List of Subjects in 47 CFR Part 54

Communications common carriers, Health facilities, Infants and children, Internet, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.
Federal Communications Commission.

Marlene Dortch,
Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

Subpart F—Universal Service Support for Schools and Libraries

1. The authority citation for part 54 continues to read as follows:

Authority: Sections 1, 4(i), 5, 201, 205, 214, 219, 220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, and section 706 of the Communications Act of 1996, as amended; 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

2. Amend § 54.502 by revising paragraph (c) and redesignating paragraph (d) as paragraph (e) and adding new paragraph (d) to read as follows:

§ 54.502 Eligible services.

* * * * *

(c) *Funding year 2020.* Libraries, schools, or school districts with schools that receive funding for category two services in funding year 2020 shall be eligible for support for category two services pursuant to paragraphs (c)(1) through (6) of this section.

(1) *Six-year funding cycle.* Each eligible school or library shall be eligible for a budgeted amount of support for category two services over a six-year funding cycle. Each school or library shall be eligible for the total available budget less the pre-discount amount of any support received for category two services in the prior funding years of that school's or library's six-year funding cycle.

(2) *School budget.* Each eligible school shall be eligible for support for category two services up to a pre-discount price of \$150 plus an additional prorated 20% (adjusted for inflation dating back to funding year 2015) over six funding years that will be completed at the end of funding year 2020. Applicants shall provide the student count per school, calculated at the time that the discount is calculated each funding year. New schools may estimate the number of students but shall repay any support provided in excess of the maximum budget based on student enrollment the following funding year.

(3) *Library budget.* Each eligible library located within the Institute of Museum and Library Services locale codes of “11 – City, Large,” defined as a territory inside an urbanized area and inside a principal city with a population of 250,000 or more, “12 – City, Midsize,” defined as a territory inside an urbanized area and inside a principal city with a population less than 250,000 and greater than or equal to 100,000, or “21 – Suburb, Large,” defined as a territory outside a principal city and inside an urbanized area with population of 250,000 or more, shall be eligible for support for category two services, up to a pre-discount price of \$5.00 per square foot plus an additional prorated 20% (adjusted for inflation dating back to funding year 2015) over six funding years that will be completed at the end of funding year 2020. All other eligible libraries shall be eligible for support for category two services, up to a pre-discount price of \$2.30 per square foot plus an additional prorated 20% (adjusted for inflation dating back to funding year 2015) over a six-year funding cycle that will be completed at the end of funding year 2020. Libraries shall provide the total area for all floors, in square feet, of each library outlet separately, including all areas enclosed by the outer walls of the library outlet and occupied by the library, including those areas off-limits to the public.

(4) *Funding floor.* Each eligible school and library will be eligible for support for category two services of at least a pre-discount price of \$9,200 plus an additional prorated 20% (adjusted for inflation dating back to funding year 2015) over six funding years that will be completed at the end of funding year 2020.

(5) *Requests.* Applicants shall request support for category two services for each school or library based on the number of students per school building or square footage per library building. Category two funding for a school or library may not be used for another school or library. The costs for category two services shared by multiple eligible entities shall be divided reasonably between each of the entities for which support is sought in that funding year.

(6) *Non-instructional buildings.* Support is not available for category two services provided to or within non-instructional school buildings or separate library administrative buildings unless those category two services are essential for the effective transport of information to or within one or more instructional buildings of a school or non-administrative library buildings, or the Commission has found

that the use of those services meets the definition of educational purpose, as defined in §54.500. When applying for category two support for eligible services to a non-instructional school building or library administrative building, the applicant shall allocate the cost of providing services to one or more of the eligible school or library buildings that benefit from those services being provided.

(d) *Funding year 2021 and beyond.* Schools, school districts, libraries, and library systems shall be eligible for support for category two services pursuant to the five-year budgets described in paragraphs (d)(1) through (6) of this section.

(1) *Fixed five-year funding cycle.* Beginning in funding year 2021, each eligible school, school district, library, or library system shall be eligible for a budgeted amount of pre-discount support for category two services over a five-year funding cycle that will reset in funding year 2026 and subsequently, after every five funding years. Each school, school district, library, or library system shall be eligible for the total available budget less the pre-discount amount of any support received for category two services in the prior funding years of that fixed five-year funding cycle.

(2) *School and school district multipliers.* Each eligible school district and schools operating independently of a school district shall be eligible for support for category two services up to a pre-discount price of \$167 per student over a five-year funding cycle. The amount of support will be calculated at the time that the discount is calculated in the first funding year of the five-year cycle in which the applicant requests category two support, unless the school or school district elects to seek additional program support using updated enrollment numbers in subsequent funding years in the five-year cycle. School districts shall provide the total number of students within the school district. Independent charter schools, private schools, and other eligible educational facilities that operate under the control of a central administrative agency shall provide the total number of students under the control of that agency. Schools that are not affiliated financially or operationally with a school district or central administrative agency shall provide the total number of students in the school.

(3) *Library and library system multipliers.* Library systems and libraries operating independently of a system shall be eligible for support for category two services, up to a pre-discount price of \$4.50 per square foot over a five-year funding cycle. The amount of support will be calculated at the time that the

discount is calculated in the first funding year of the five-year cycle in which the applicant requests category two support, unless the library or library system elects to seek additional program support using updated square footage in subsequent funding years in the five-year cycle. Library systems shall provide the total area for all floors, in square feet, of all of its library outlets, including all areas enclosed by the outer walls of the library outlet and occupied by the library, including those areas off-limits to the public. Independent libraries shall provide the total area for all floors, in square feet, of all areas enclosed by the outer walls of the library outlet and occupied by the library, including those areas off-limits to the public.

(4) *Funding floor.* Each eligible school and library shall be eligible for support for category two services of at least a pre-discount price of \$25,000 over five funding years.

(5) *Calculation increase.* Before funding year 2026 and every subsequent five-year funding cycle, the Wireline Competition Bureau shall announce the multipliers and funding floor as adjusted for inflation at least 60 days before the start of the filing window for the next five-year funding cycle. The Bureau shall use the last four quarters of data on the Gross Domestic Product Chain-type Price Index (GDP-CPI) compared with the equivalent quarters from the beginning of the five-year funding cycle. The increase shall be rounded to the nearest 0.1 percent and shall be used to calculate the category two budget multipliers and funding floor for that five-year funding cycle. The multipliers and funding floor shall be rounded to the nearest cent.

(6) *Non-instructional buildings.* Support is not available for category two services provided to or within non-instructional school buildings or separate library administrative buildings unless those category two services are essential for the effective transport of information to or within one or more instructional buildings of a school or non-administrative library buildings, or the Commission has found that the use of those services meets the definition of educational purpose, as defined in §54.500. When applying for category two support for eligible services to a non-instructional school building or library administrative building, the applicant shall deduct the cost of the non-instructional building's use of the category two services or equipment.

(e) *Eligible services list process.* The Administrator shall submit by March 30 of each year a draft list of services eligible for support, based on the Commission's rules for the following funding year.

The Wireline Competition Bureau will issue a Public Notice seeking comment on the Administrator's proposed eligible services list. The final list of services eligible for support will be released at least 60 days prior to the opening of the application filing window for the following funding year.

3. Amend § 54.513 by revising paragraph (d) to read as follows:

§ 54.513 Resale and transfer of services.

* * * * *

(d) Eligible services and equipment components of eligible services purchased at a discount under this subpart shall not be transferred, with or without consideration of money or any other thing of value, for a period of three years after purchase, except that eligible services and equipment components of eligible services may be transferred to another eligible school or library in the event that the particular location where the service originally was received is permanently or temporarily closed, or is part of the same eligible school district or library system as the location receiving the eligible services or equipment components of eligible services. If an eligible service or equipment component of a service is transferred pursuant to this paragraph, both the transferor and recipient must maintain detailed records documenting the transfer and the reason for the transfer for a period of five years.

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